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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/808,934

03/25/2004

Masahiko Sato

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6893

7590

09/27/2006

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New York, NY 10151

EXAMINER

DUNCAN, MARC M

ART UNIT

PAPER NUMBER

2113

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/808,934

Applicant(s)

SATO ET AL.

Examiner

Marc Duncan

Art Unit

2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-11 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of the Claims***

Claims 10 and 11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-5 and 7-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Huh et al. (6,584,559).

Claim 6 is objected to.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 10 and 11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 10 recites a program that is not tangibly embodied on a computer readable medium. A program per se is not statutory subject matter. Claim 11 recites a program stored on a recording medium. The recording medium is not computer readable and therefore does not provide the necessary functional interrelationship between the computer executable instructions and the computer meant to execute those instructions in order to make the claimed subject matter statutory. See MPEP 2106.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5 and 7-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Huh et al. (6,584,559).

Regarding claims 1 and 9-11:

Huh teaches:

selecting means for selecting one of said first storage area and said second storage area into which said software is to be downloaded (col. 3 lines 54-60);

first calculating means for calculating a first calculation value indicative of an error of said software (col. 3 lines 63-65 and col. 4 lines 6-9);

second calculating means for calculating a second calculation value indicative of an error on the basis of said first calculation value (col. 4 lines 35-38 and lines 55-60);  
and

determining means for determining whether said information processing apparatus has normally ended (col. 4 line 65-col. 5 line 3).

Regarding claim 2:

Huh teaches:

further comprising a third storage area, wherein said first calculating means copies the downloaded software into said third storage area (col. 3 lines 54-60).

Regarding claim 3:

Huh teaches:

wherein said software is downloaded in a predetermined unit of files (col. 3 lines 54-60), said first calculating means calculates an error for each of said files as said first calculation value (col. 3 lines 54-60), and said second calculating means calculates a calculation value indicative of an error on the basis of predetermined number of said first calculation values as said second calculation value (col. 4 lines 35-38 and lines 55-60).

Regarding claim 4:

Huh teaches:

wherein said determining means comprising: verifying means for verifying whether the shutdown of said information processing apparatus has ended (col. 4 line 65-col. 5 line 3); and

setting means for setting predetermined information indicative of normal end of the shutdown of said information processing apparatus (col. 5 lines 4-40).

Regarding claim 5:

Huh teaches:

further comprising: first comparing means for comparing a second calculation value of said information processing apparatus with a second calculation value of one of a server and a removable medium (col. 4 lines 35-38 and lines 55-60 – a checksum inherently requires a comparing means); and

second comparing means for comparing a first calculation value of said information processing apparatus with a first calculation value of one of said server and said removable medium, if, as a result of the comparison by said first comparing means, there is a mismatch between said second calculation value of said information processing apparatus and said second calculation value of one of said server and said removable medium (col. 3 lines 63-65 and col. 4 lines 6-9 – a checksum inherently requires a comparing means. Additionally, the first calculation value is compared to a first calculation value of server or medium regardless of whether or not the second calculation values match).

Regarding claim 7:

Huh teaches:

startup means for starting up said information processing apparatus by selecting one of said storage areas on the basis of said predetermined information set by said setting means (col. 5 lines 4-66).

Regarding claim 8:

Huh teaches:

wherein said startup means has setting information determining means for determining the information set by said setting means which, starts up said information processing apparatus by use of the software stored in one of said first storage area and said second storage area, if the predetermined information indicative of normal end of the shutdown of said information processing apparatus is found set by said setting information determining means (col. 5 lines 4-66 – if the new firmware is invalid, the previous valid firmware or the permanent firmware are used to boot the machine), and starts up said information processing apparatus by use of the software stored in said third storage area, if the predetermined information indicative of normal end of the shutdown of said information processing apparatus is found not set by said setting information determining mean (col. 5 lines 4-66 – if the new firmware is valid, the machine is booted using the new firmware stored in the nonvolatile memory).

### ***Allowable Subject Matter***

Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

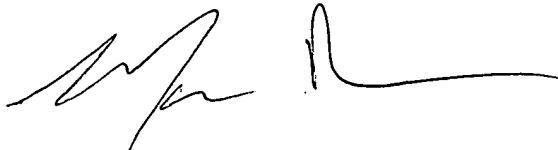
### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Duncan whose telephone number is 571-272-3646. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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